S.B. Civil Writ Petition No.7572/2007
Smt. Sitara Devi
vs
Mohd. Salim & Ors.

Date of order : 29.11.2007.

HON'BLE MR. PRAKASH TATIA, J.

Mr.Suresh Shrimali for the petitioner.
Mr. Ravi Bhansali, for the respondent.

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Heard learned counsel for the parties.

The writ petition has been filed by the petitioner-objector who submitted objection petition under Order 21 Rule 9 CPC against the execution of the decree passed in Civil Original Suit No.195/75 dated 13th Nov., 1997 and ultimately, upheld by this Court in S.B.Civil Second Appeal No.264/2006 by judgment dated 18th August, 2006.

The objector-petitioner's contention is that she is legal heir of the original defendant Amanat Rai and Amanat Rai died during the pednency of the suit, but she was not impleaded as party in the suit, therefore, the decree under challenge is not binding upon her.

It is not in dispute that one of the legal representatives of Amanat Rai was also party in the litigation and when an objection was raised before the this Court in second appeal for not impleading other legal representatives of Amanat Rai that

objection was rejected on the ground that it has not been shown that Amanat Rai had any other legal representatives. Be that as it may be, the decree was passed in a suit where Amanat Rai was party and his one of the legal representatives was on record and suit or appeal were not dismissed as abated by the courts in earlier round of litigation then that decree is binding against Amanat Rai and his successors. Otherwise also, on merits, the objector-petitioner could not prove any case.

Learned counsel for the respondent pointed out that same petitioner filed one suit in the trial court and that was dismissed for want of evidence. However, learned counsel for the petitioner submitted that as per his information, the appeal is pending against the said dismissal of the suit.

Be that as it may be, I do not find any illegality in the impugned orders passed by the courts below and no ground is made out for interference by this Court in writ jurisdiction under Article 227 of the Constitution of India.

Hence, the writ petition of the petitioner is dismissed having no merit.

(PRAKASH TATIA), J.

c.p.goyal/-